IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ALLEN W. HARTMAN and KIMBERLY M. HARTMAN,	01-C-0060-C	
KHAY YANG and BEE YANG,	01-C-0061-C	
PATRICK GUMS and SHARI GUMS,	01-C-0088-C	OPINION AND ORDER
KELLY MILLARD,	01-C-0104-C	
TERRY REANY and TINA REANY,	01-C-0254-C	
DERRICK JONES,	01-C-0415-C	
ERIC SENNHOLZ,	01-C-0416-C	
MICHAEL PIPP and KRISTINE PIPP,	01-C-0424-C	

Plaintiffs,

v.

MERIDIAN FINANCIAL SERVICES, INC.,

Defendant.

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These civil actions have been consolidated under case no. 01-C-0060-C. On March 11, 2002, the court entered an order granting plaintiffs' motion for summary judgment as

to liability. In that same order the court asked the parties to brief the issue of statutory damages as to each plaintiff under the Fair Debt Collection Practices Act and Wisconsin Consumer Act. The maximum statutory damages allowable under each statute are $1,000. The parties briefed the issue and disputed whether joint obligors were entitled to one statutory damage award (for each cause of action) or two (for each joint obligor in each cause of action). Thus, plaintiffs' position was that the total possible damages for the consolidated lawsuit was capped at $26,000 ($2,000 multiplied by 13 plaintiffs) and defendant's position was that it was capped at $16,000 ($2,000 multiplied by 8 lawsuits). On April 18, 2002, plaintiffs' counsel informed the court that the parties had settled as to damages in the amount of $20,000.

Presently before the court is plaintiffs' amended motion for an award of attorney fees and costs in which they request $99,870 in attorney fees and $6,043.53 in costs incurred in bringing this litigation. For the reasons stated below, plaintiffs' motion for an award of attorney fees and costs will be granted in part and denied in part and defendant shall be required to pay plaintiffs $94,320 in attorney fees and $6,043.53 in costs

OPINION

Because the FDCPA and Wisconsin Consumer Act are fee-shifting statutes and summary judgment as to liability was granted in plaintiffs' favor, plaintiffs are entitled to reasonable attorney fees and costs. See 15 U.S.C. § 1692k(a)(3) and Wis. Stat. § 425.308. In order to calculate a reasonable attorney fee, the number of hours reasonably expended is

multiplied by a reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Once this so-called "lodestar" figure is calculated, the court may adjust it by considering other factors, such as the time and labor required, the skill required to perform the legal services properly, the amount involved and the results obtained, the novelty or difficulty of the question, the customary fee and the experience, reputation and ability of the lawyers. See Tolentino v. Friedman, 46 F.3d 645, 642 (7th Cir. 1995) (citing Hensley, 461 U.S. at 441).

Plaintiffs ask for $99,870 in attorney fees (499.35 hours multiplied by $200 an hour) and $6,043.53 in related costs. Defendant does not oppose the hourly rate charged by plaintiffs' counsel. Rather, defendant objects to the fees and costs on a number of other grounds. Specifically, defendant argues that the court should (1) eliminate fees and costs associated with filing eight redundant complaints; (2) eliminate fees for researching and drafting a response to defendant's motion to transfer and consolidate; (3) eliminate fees for attempting to revive North Carolina claims; (4) eliminate fees and costs associated with the duplicative legal effort in preparing for and deposing Greg Shepard; (5) reduce the fees incurred in drafting plaintiffs' brief in support of summary judgment; and (6) strike the fees plaintiffs incurred in drafting their brief in support of this motion for award of fees and costs. I will address each objection in turn.

1. Filing eight complaints

Defendant characterizes plaintiffs' eight complaints as "redundant" and asserts that plaintiffs should have filed a consolidated case. Defendant cites no authority for the proposition that plaintiffs should have filed a consolidated complaint when the only common connection among these plaintiffs is the type of violations that defendant committed against them (and, of course, their counsel). Plaintiffs respond that defendant is blaming them for its own repetitive illegal conduct and that (1) some of them had to file in the Western District of Wisconsin while others had to file in the Eastern District of Wisconsin; (2) some of them had to file earlier than others because of statute of limitations issues; and (3) there is no requirement of consolidation when different plaintiffs are involved in separate transactions. I agree. Simply put, it takes some audacity for defendant to commit a myriad of statutory violations (both federal and state) against 13 individuals and then cry foul play when these individuals seek redress in the courts. The lodestar figure will not be reduced for the fees and costs associated with the filing of separate complaints.

2. Motion to transfer and consolidate

Defendant argues that plaintiffs did not prevail on the issues of consolidation and transfer and, as a result, cannot recover fees and costs for time spent researching, drafting and revising their response to defendant's motion on these issues. I agree. Defendant does not provide a breakdown as to the total number of hours that plaintiffs' counsel spent on

this issue. Instead, it cites two separate pages from the itemized time sheets submitted by counsel. According to these pages, Mary Catherine Fons spent 3.9 hours (page 7) and De Vonna Joy spent 0.4 hours (page 6) on the issue of transfer and consolidation. This totals 4.3 hours. Because plaintiffs opposed the motion to consolidate and transfer and did not prevail, I will reduce the lodestar figure by $860 (4.3 hours multiplied by $200 an hour).

3. Arguments made under North Carolina law

On August 28, 2001, this court dismissed plaintiffs' claim that was brought under the North Carolina debt collection statute. Defendant concedes that plaintiffs have done a "good job" of eliminating fees relating to their North Carolina claim from their itemized statements. However, defendant argues that plaintiffs spent a "fair amount of time" in their briefs attempting to revive their North Carolina claims (the exact amount of which defendant cannot discern from the submitted time sheets).

In plaintiffs' brief in support of their motion for summary judgment, they argued (in two pages) that defendant was in violation of North Carolina law when it did not reveal to the state's licensing bureau the alias it was using to collect debts and that it had violated the FDCPA by not revealing this information. In response, defendant alleged in a footnote that plaintiffs were attempting to "revive" their claims under North Carolina law that had been dismissed previously by this court. In their reply brief, plaintiffs reiterated their position (in one short paragraph) that a violation of state law (in this case, North Carolina) is a per se

violation of the FDCPA.

Although defendant may have been confused, I do not construe plaintiffs' briefs as attempting to revive the North Carolina claims that had been dismissed. On the contrary, plaintiffs were simply contending that by violating North Carolina law, defendant had violated the FDCPA. The lodestar figure will not be reduced by the time plaintiffs spent arguing that a violation of North Carolina state law is a violation of the FDCPA.

4. Duplicative legal effort in deposing Greg Shepard

Defendant argues that plaintiffs needlessly sent two experienced lawyers to North Carolina to depose Greg Shepard (president of Meridian Financial Services, Inc.) and that one lawyer, Joy, never asked a single question. Defendant contends that this represents 103.55 hours and $2,618.92 in associated costs preparing for and deposing Shepard. However, it is impossible for me determine how defendant calculated these totals and defendant provides no clues other than a cursory reference to pages 13-15 and 18 of Fons's affidavit and pages 4-8 of Joy's. See Dft.'s Resp. to Mot. for Atty. Fees and Costs, dkt. #132, at 6-7. In fact, I am not even sure whether these alleged hours and costs represent the time and costs incurred by both lawyers or the duplicative effort only. For example, adding up every time increment found on pages 4 through 8 of Joy's affidavit (which includes non-deposition related time) results in a total of 73.2 hours only (16.2 + 12.4 + 5.7 + 5.2 + 33.7, pages 4 through 8, respectively). Defendant accuses plaintiffs of "churning" fees

through verbose brief writing; however, there is something to be said for providing complete arguments and thorough citations to a court. In any event, I agree with defendant that an experienced lawyer billing $200 an hour does not need another experienced lawyer to be present at a deposition. See Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 559 (7th Cir. 1999) ("A district court should disallow costs that are unreasonable either because they are excessive in amount or because they should not have been incurred at all."); see also Zabkowicz v. West Bend Co., 789 F.2d 540, 553 (7th Cir. 1986). However, plaintiffs argue that discovery documents were not provided in a timely manner in order to facilitate a thorough deposition. For example, plaintiffs point out that a whole banker's box of materials was brought to one deposition and the collection form letters to the other. As a result of these last-minute discovery disclosures, plaintiffs are entitled to the assistance of an "associate" at the depositions to help cull through and investigate these new documents in order to ask follow-up questions. Because Joy did not depose Shepard but rather assisted Fons, her hourly rate will be reduced from $200 to $100, representing the work of an associate. This lower associate rate will be applied to Joy's hours for the actual deposition and related travel time only. From May 21 to May 23, 2001, Joy logged 20.2 hours and from October 15 to October 17, 2001, she logged another 26.7 hours. The total amount of Joy's time relating directly to deposing Shepard is 46.9 hours (20.2 + 26.7). Accordingly, the lodestar amount will be reduced by $4,690 (46.9 hours multiplied by $100 an hour, the difference in hourly rates). Because it costs the same amount for a experienced lawyer or an

associate to travel to North Carolina to depose a witness, the associated costs will not be reduced.

5. Brief in support of summary judgment

Defendant argues that plaintiffs spent an inordinate amount of time (allegedly 112.9 hours) preparing and drafting their 91-page summary judgment brief and that this time bears no reasonable relation to the amount of potential recovery that plaintiffs expected to obtain, which was $26,000. See Hensley, 461 U.S. at 430 n.3 (one of 12 factors relevant when adjusting lodestar is "amount involved and the results obtained."). Again, defendant fails to provide the court with a breakdown of how it calculated its 112.9 hour figure. In any event, defendant cites Altergott v. Modern Collection Techniques, Inc., 864 F. Supp. 778 (N.D. Ill. 1994), in which the court reduced the lodestar because the plaintiff collected only a $300 judgment under the FDCPA. However, it is important to note that in Altergott, the court found that the plaintiff could have filed a motion for judgment on the pleadings early in the lawsuit because the defendant conceded in its answer that it had violated the FDCPA. Id. at 783. Moreover, in this case, each of the 13 plaintiffs settled for $1,538.46 (nearly 77% of the total $2,000 statutory award available), whereas in Altergott, one plaintiff collected $300 (30% of possible award). Id.

Plaintiffs argue that (1) they had the burden of proving their case as to each of the 13 plaintiffs; (2) there were over 150 separate violations of the relevant statutes; and (3) the

case was fact intensive. Plaintiffs assert further that the amount of time devoted to this case was a direct result of defendant's resistance and refusal to stipulate to even the most basic facts. For example, defendant argued the untenable position that the case did not involve "consumer transactions" even though it was undisputed that plaintiffs bought their condominium timeshare interests for personal, family or household purposes. See Dft.'s Resp. to Mot. for Summ. J., dkt #109, at 2. Moreover, plaintiffs argue that before this court granted summary judgment in their favor, they made many settlement offers but defendant neither responded nor proffered any settlement of its own. In other words, plaintiffs argue, defendant's non-settlement posture coupled with its recalcitrant position as to even basic facts caused the attorney fees and costs to be what they are today. Thus, unlike Altergott, it was not plaintiffs who caused the fees and costs to ratchet up.

Defendant maintains that in one (allegedly useless) paragraph of plaintiffs' summary judgment brief, "plaintiffs attempt to justify this incredible expenditure by suggesting that their 'victory' will provide some sort of benefit to society at large," but that this argument would have appeal only "if plaintiffs had sought injunctive relief or some other remedy that would produce a larger social benefit." Dft.'s Resp., dkt. #132, at 7. Unfortunately, defendant misses the moral of the story. The Court of Appeals for the Seventh Circuit and Supreme Court sum it up nicely, "'[u]nlike most private tort litigants, [a plaintiff who brings an FDCPA action] seeks to vindicate important * * * rights that cannot be valued solely in monetary terms' . . . and congress has determined that the public as a whole has an interest

in the vindication of the statutory rights." Tolentino, 46 F.3d at 652 (quoting City of Riverside v. Rivera, 477 U.S. 561, 562 (1986)).

It is true that plaintiffs' brief was long; however, it was neither redundant nor unnecessary considering the number of violations and defendant's posture. In fact, this court's own summary judgment opinion spanned 40 pages and consumed considerable time. Other than noting the brief's overall length and the time involved, defendant fails to point to even one argument that plaintiffs should have excluded from their summary judgment brief because its was excessive or unnecessary. The lodestar figure will not be reduced because of the time spent drafting plaintiffs' brief in support of summary judgment.

6. Brief in support of award of fees and costs

Defendant argues that this court should "strike" all fees and costs incurred (allegedly 4.3 hours) in drafting their 15-page brief in support of the motion for attorney fees and costs. Defendant responded with a nine page brief. This amount of time does not seem unreasonable for drafting a 15-page brief, itemizing billable hours from January 29, 2001 to May 3, 2002 (including deductions for disallowed time) and compiling an affidavit. Accordingly, the lodestar figure will not be reduced for this time.

In sum, plaintiffs' motion for an award of fees and costs will be granted in the amount of $94,320 ($99,870 minus $860 and $4,690) for attorney fees and $6,043.53 in costs.

ORDER

IT IS ORDERED that the motion of plaintiffs Allen W. Hartman, Kimberly M. Hartman, Khay Yang, Bee Yang, Patrick Gums, Shari Gums, Kelly Millard, Terry Reany, Tina Reany, Derrick Jones, Eric Sennholz, Michael Pipp and Kristine Pipp for an award of attorney fees and costs is GRANTED in part and DENIED in part; defendant Meridian Financial Services, Inc. owes plaintiffs $94,320 in attorney fees and $6,043.53 in costs. The clerk of court is directed to enter judgment for plaintiffs and close this file.

Entered this 24th day of May, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge